

Senator Jacob L. Anderegg proposes the following substitute bill:

EMERGENCY VEHICLE OPERATOR DUTY OF

CARE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill requires agencies to have written policies to govern the protocol for engaging and terminating authorized emergency vehicle pursuit and modifies the duty of care if the operator acts outside the written policy.

Highlighted Provisions:

This bill:

- requires agencies operating authorized emergency vehicles to have a written policy to govern the protocol of the operator of the authorized emergency vehicle to engage, conduct, and terminate vehicle pursuit;

- provides that the operator of an authorized emergency vehicle owes a duty of care to the occupant of a vehicle under pursuit if the operator of the authorized emergency vehicle acts outside the written protocol for vehicle pursuit;

- requires the head of a law enforcement agency involved in a pursuit resulting in injury or property damage to evaluate compliance with policies and document and remedy any violations of the policies; and

- makes technical changes.

Money Appropriated in this Bill:



None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-212, as last amended by Laws of Utah 2014, Chapter 288

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **41-6a-212** is amended to read:

**41-6a-212. Emergency vehicles -- Policy regarding vehicle pursuits --
Applicability of traffic law to highway work vehicles -- Exemptions.**

(1) As used in this section, "marked authorized emergency vehicle" means an authorized emergency vehicle that:

(a) has emergency lights that comply with Section **41-6a-1601** affixed to the top of the vehicle; or

(b) is displaying an identification mark designating the vehicle as the property of an entity that is authorized to operate emergency vehicles in a conspicuous place on both sides of the vehicle.

(2) Subject to Subsections (3) through (6), the operator of an authorized emergency vehicle may exercise the privileges granted under this section when:

(a) responding to an emergency call;

(b) in the pursuit of an actual or suspected violator of the law; or

(c) responding to but not upon returning from a fire alarm.

(3) The operator of an authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the maximum speed limits, unless prohibited by a local highway authority under Section **41-6a-208**; or

(d) disregard regulations governing direction of movement or turning in specified directions.

(4) (a) Except as provided in Subsection (4)(b), privileges granted under this section to the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply only when:

(i) the operator of the vehicle sounds an audible signal under Section 41-6a-1625; or
(ii) uses a visual signal with emergency lights in accordance with rules made under Section 41-6a-1601, which is visible from in front of the vehicle.

(b) An operator of an authorized emergency vehicle may exceed the maximum speed limit when engaged in normal patrolling activities with the purpose of identifying and apprehending violators.

(5) (a) Privileges granted under this section to the operator of an authorized emergency vehicle involved in any vehicle pursuit apply only when:

~~[(a)]~~ (i) the operator of the vehicle:
~~[(i)]~~ (A) sounds an audible signal under Section 41-6a-1625; and
~~[(ii)]~~ (B) uses a visual signal with emergency lights in accordance with rules made under Section 41-6a-1601, which is visible from in front of the vehicle;

~~[(b) the public agency employing the operator of the vehicle has, in effect, a written policy which describes the manner and circumstances in which any vehicle pursuit should be conducted and terminated;]~~

~~[(c)]~~ (ii) the operator of the authorized emergency vehicle has been trained in accordance with the written policy described in Subsection (5)(b); and

~~[(d)]~~ (iii) the pursuit policy of the public agency described in Subsection (5)(b) is in conformance with standards established under Subsection (6).

(b) (i) Each public agency that owns, operates, or causes to be operated an authorized emergency vehicle shall have a written policy that describes the manner and circumstances in which an operator of an authorized emergency vehicle shall engage, conduct, and terminate vehicle pursuit.

(ii) The policy described in Subsection (5)(b)(i) shall conform with the minimum standards set forth pursuant to Subsection (6).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Public Safety shall make rules providing minimum standards for all emergency pursuit policies that are adopted by public agencies authorized to operate emergency pursuit

vehicles.

(7) (a) Except as provided in Subsection (7)(b), the privileges granted under this section do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator under the circumstances.

(b) The operator of a marked authorized emergency vehicle owes no duty of care under this Subsection (7) to a person who is:

(i) (A) a suspect in the commission of a crime; and

(B) evading, fleeing, or otherwise attempting to elude the operator of a marked authorized emergency vehicle; or

(ii) in a motor vehicle with the suspect described in Subsection (7)(b)(i), unless it is proven by a preponderance of the evidence that:

(A) the person's presence in the vehicle was involuntary; and

(B) the person's participation in evading, fleeing, or attempting to elude was involuntary.

(c) (i) Notwithstanding Subsection (7)(b), an operator of a marked authorized emergency vehicle may be held liable for a fleeing suspect's injuries if the operator of a marked authorized emergency vehicle had actual intent to cause harm to the fleeing suspect in an act that was unrelated to the legitimate object of the arrest.

(ii) "Actual intent" under this Subsection (7)(c) means a malicious motive to cause injury, not merely an intent to do the act resulting in the injury.

(d) If an operator of a marked authorized emergency vehicle complies with the requirements described in Subsections (5) and (6) while operating the marked authorized emergency vehicle, the operator shall be deemed to have met the operator's duty to act as a reasonably prudent emergency vehicle operator under the circumstances.

(8) (a) For each instance involving an authorized emergency vehicle in pursuit that results in injury or property damage, the head of the law enforcement agency involved in the pursuit shall evaluate the situation to determine whether the operator of the authorized emergency vehicle complied with the agency's policies.

(b) After the evaluation described in Subsection (8)(a), the head of the law enforcement agency shall document and appropriately remedy through agency administrative action any violations of the agency's policies.

119 (c) Any document produced under Subsection (8)(b) shall be subject to Title 63G,
120 Chapter 2, Government Records Access and Management Act.
121 [~~(8)~~] (9) Except for Sections 41-6a-210, 41-6a-502, and 41-6a-528, this chapter does
122 not apply to persons, motor vehicles, and other equipment while actually engaged in work on
123 the surface of a highway.